



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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March 7, 2012

Garry F. Otto
DOC 905901
5124 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 12-FC-56; Alleged Violation of the Access to Public Records Act by the Correctional Industrial Facility

Dear Mr. Otto:

This advisory opinion is in response to your formal complaint alleging the Correctional Industrial Facility ("CIF") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Tim Purcell, Assistant Superintendent of Re-Entry, responded on behalf of the CIF. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a request to the CIF on January 31, 2012 for a copy of the record of used by the CIF to illegally place "override" on your Offender Classification Detail for assaultive behavior. As of February 27, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that that CIF has not responded in any fashion to your original request.

In response to your formal complaint, Mr. Purcell advised that that your classification designation being "overridden" by a recent complaint of assaultive behavior was a clerical error. Indiana Department of Correction's Classification Policy 01-04-101 allows for the classification supervisor/designee to "override" as needed. Your record was "overridden" due to criteria.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The CIF is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the CIF's public

records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. Here the CIF advised that your classification designation being “overridden” in response to a recent complaint of assaultive behavior was a clerical error. As the classification designation was not overridden due to assaultive behavior, there was no record that was responsive to your request. As such, it is my opinion that the CIF did not violate the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the CIF did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Assistant Superintendent Tim Purcell